

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH DAKOTA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) CASE NO. 19-4121
)
 MICHAEL J. POTTEBAUM, also known as Mike)
 Pottebaum; PAMELA H. POTTEBAUM, also)
 known as Pam Pottebaum; and)
 UNION COUNTY, SOUTH DAKOTA,)
)
 Defendants.)

COMPLAINT

Plaintiff United States of America brings this civil action to reduce to judgment unpaid federal income tax assessments made against defendant Michael J. Pottebaum and enforce federal tax liens on the real property described in Count II of this complaint.

JURISDICTION and VENUE

1. This Court has jurisdiction over this action pursuant to § 7402(a) and 7403 of the Internal Revenue Code (26 U.S.C.) and 28 U.S.C. §§ 1340 and 1345.
2. This action is brought at the direction of a delegate of the Attorney General of the United States and with the authorization and at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, pursuant to 26 U.S.C. §§ 7401 and 7403(a).
3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1396 because the individual defendants reside in this district.

PARTIES

4. Plaintiff is the United States.

5. Defendant Michael J. Pottebaum is a resident of South Dakota, and has an address at 594 East Sawgrass Trail, Dakota Dunes, Union County, South Dakota.

6. Defendant Pamela H. Pottebaum is a resident of South Dakota, and has an address at 594 East Sawgrass Trail, Dakota Dunes, Union County, South Dakota.

7. Union County, South Dakota is named as a defendant to Count II of the complaint, pursuant to 26 U.S.C. § 7403(b), because it may claim an interest in the real property on which the United States seeks to enforce its tax liens.

Defendants Michael J. and Pamela H. Pottebaum's Income Tax Assessments

8. Michael J. Pottebaum and Pamela H. Pottebaum jointly filed their 2004, 2005, 2006, 2007, and 2009 federal income tax returns.

9. On the dates specified below, a delegate of the Secretary of the Treasury made assessments of federal income tax, penalty, and interest against Michael J. Pottebaum and Pamela H. Pottebaum for the years and in the amounts hereinafter indicated:

Tax Year	Dates Assessment	Tax Assessed	Penalty Assessed	Interest Assessed
2004	08/01/2005	\$ 88,113.88	\$ 2,080.98	\$ 1,497.03
	10/01/2018			\$ 54,882.44
2005	05/22/2006	\$ 90,338.80	\$ 3,820.80	\$ 573.43
	10/01/2018			\$ 54,786.03
2006	07/30/2007	\$ 73,748.28	\$ 3,912.44	\$ 1,392.42
	07/11/2011	\$ 71,984.77	\$ 7,198.48	
2007	08/04/2008	\$ 43,389.71		\$ 89.63

	04/20/2009	\$ 5,235.13	\$ 1,073.26	
	07/18/2011	\$ 82,573.57	\$16,514.71	
2009	11/15/2010	\$ 16,406		
	07/29/2013	\$ 13,559	\$ 2,999.80	\$ 1,905.72

10. The IRS gave notices of the assessments described in paragraph 9 above, and made demands for payment to Michael J. Pottebaum and Pamela H. Pottebaum on or about the dates of the assessments.

Michael J. and Pamela H. Pottebaum Acquired the Subject Property

11. By warranty deed dated June 15, 2011, and recorded with the Union County, Elk Point, South Dakota Register of Deeds Office on July 13, 2011, Michael J. Pottebaum and Pamela H. Pottebaum acquired real property located at 594 East Sawgrass Trail, Dakota Dunes, South Dakota 57049 from Kenneth B. Mouw. The real property has a legal description as follows:

Lot Thirty-three (33) in Dakota Dunes Golf Course
5th Addition in Dakota Dunes, Union County,
South Dakota, according to the recorded plat thereof.

Defendants Michael J. and Pamela H. Pottebaum's Chapter 7 Bankruptcies

12. On December 5, 2013, Michael J. Pottebaum filed a Chapter 13 bankruptcy case, In re Michael J. Pottebaum (Case No. 13-02030 N.D. Iowa), which was converted to a Chapter 7 case on June 10, 2014.

13. Michael J. Pottebaum commenced an adversary proceeding in connection with his bankruptcy matter, seeking a determination that his federal income tax debts for the 2004, 2005,

2006, 2007, and 2009 tax years are dischargeable. See Pottebaum v. United States (Adversary No. 14-09067 N.D. Iowa). Docket Entry No. 1.

14. On August 3, 2016, the bankruptcy court entered judgment in the adversary proceeding, in accordance with a stipulation, excepting Michael J. Pottebaum's 2004, 2005, 2006, 2007, and 2009 federal income tax liabilities from discharge pursuant to 11 U.S.C. § 523(a)(1)(C). Docket Entry No. 47.

15. The bankruptcy court's judgment also stated that the pre-petition penalties relating to Michael J. Pottebaum's nondischargeable federal income tax liabilities are dischargeable under 11 U.S.C. § 523(a)(7)(B). ECF Doc. No. 47.

16. Michael Pottebaum’s bankruptcy discharge of pre-petition penalties had no effect on the liens relating to those penalties because the IRS filed pre-petition notices of federal tax lien.

11 U.S.C. § 522(c)(2)(B). The liens for the pre-petition penalties survived the discharge. *Id.*

17. The ten-year statutory period for collecting Michael Pottebaum's 2004, 2005, 2006, 2007, and 2009 federal income tax liabilities was suspended during the pendency of his bankruptcy proceeding and for six months thereafter. 26 U.S.C. §§ 6502(a) and 6503(h)(2).

18. On July 15, 2014, Pamela Pottebaum filed a Chapter 7 bankruptcy case, In re Pamela J. Pottebaum, (Case No. 14-01100 N.D. Iowa).

19. Pamela Pottebaum filed an adversary proceeding in connection with her bankruptcy matter, seeking a determination that her federal income tax debts for the 2004, 2005, 2006, 2007, and 2009 tax years are dischargeable. See Pottebaum v. United States (Adversary No. 14-09066 N.D. Iowa). Docket Entry No. 1.

20. On November 13, 2015, the bankruptcy court entered judgment in the adversary proceeding, in accordance with a stipulation, discharging Pamela Pottebaum's 2004, 2005, 2006, 2007, and 2009 federal income tax liabilities under 11 U.S. C. § 727(a). Docket Entry No. 23.

21. Pamela Pottebaum's bankruptcy discharge of her 2004, 2005, 2006, and 2007 federal income tax liabilities had no effect on the liens relating to those tax liabilities because the IRS filed pre-petition notices of federal tax lien. 11 U.S.C. § 522(c)(2)(B); 26 U.S.C. § 6322. Docket Entry No. 23. The liens for the 2004, 2005, 2006, 2007, and 2009 federal income tax liabilities survived the discharge. Id.

22. The ten-year statutory period for collecting against the liens relating to Pamela Pottebaum's 2004, 2005, 2006, 2007, and 2009 federal income tax liabilities was suspended during the pendency of her bankruptcy proceeding and for six months thereafter. 26 U.S.C. §§ 6502(a) and 6503(h)(2).

COUNT I – Reduce Michael J. Pottebaum's federal income tax assessments to judgment

23. The allegations contained in paragraphs 1-5 and 8-22 above are incorporated herein.

24. As of April 12, 2019, the unpaid balances for Michael J. Pottebaum's 2004, 2005, 2006, 2007, and 2009 federal income tax liabilities, including interest and without penalties discharged in bankruptcy, are as follows:

Tax Year	*Balance of Liability as of July 8, 2019
2004	\$ 91,384.79
2005	\$132,871.30
2006	\$218,582.61

2007	\$148,859.28
2009	\$ 19,278.30
TOTAL	\$610,976.28

*This balance, as of July 8, 2019, includes assessments, payments, credits, lien and collection fees, and accrued statutory interest (which compounded daily on the entire unpaid balance from the date of the assessments through July 8, 2019). Interest and other statutory additions have accrued and will continue to accrue thereafter.

25. Despite the notices and demands described in paragraph 10 above, Michael J. Pottebaum failed to pay the amounts he owes for tax years 2004, 2005, 2006, 2007, and 2009 described in paragraph 24 above.

26. By reason of the foregoing, Michael J. Pottebaum is liable to the United States in the amount of \$610,976.28, plus interest and other statutory additions that have accrued and will continue to accrue thereon from July 8, 2019.

WHEREFORE, the United States requests entry of judgment in its favor on Count I as follows:

(a) that the Court enter judgment in favor of the United States and against Michael J. Pottebaum for \$610,976.28, plus interest and other statutory additions that have accrued and will continue to accrue thereon after July 8, 2019, until the judgment is paid; and

(b) that the Court award the United States its costs and such other and further relief as the Court deems just and proper.

COUNT II -Lien Enforcement

Attachment of Federal Tax Liens and Filing of Notices of Federal Tax Liens

27. The allegations contained in paragraphs 1 through 26 above are incorporated herein.

28. As a result of the assessments described in paragraph 9 above, as well as the notices of assessments, demands for payment, and subsequent failures to pay, federal tax liens arose, pursuant to 26 U.S.C. §§ 6321 and 6322, in favor of the United States on the dates of each of the assessments and attached to all property and rights to property then belonging to Michael J. and Pamela H. Pottebaum, including their interest in the real property described in paragraph 11 above, as a matter of law.

29. A delegate of the Secretary of the Treasury filed notices of federal tax liens relating to Michael J. and Pamela H. Pottebaum's 2004, 2005, 2006, 2007, and 2009 federal income tax years with the Union County, Elk Point, South Dakota Register of Deeds Office on the dates listed below:

Tax Year	Date NFTL Filed	Date NFTL Refiled
2004	August 20, 2012	September 16, 2014
2005	April 3, 2008	October 13, 2015
2006	April 3, 2008 June 11, 2013	September 26, 2016
2007	June 15, 2009 June 11, 2013	
2009	September 23, 2013	

30. The federal tax liens referred to in paragraph 29 above may be enforced against the subject property and the subject property may be sold.

WHEREFORE, the United States respectfully requests this Court to enter judgment in its favor and against all other parties to this action on Count II of its complaint as follows:

- A. Declare that the federal tax liens are valid and subsisting liens that attach to all property and rights to property of Michael J. Pottebaum and Pamela H. Pottebaum as of the dates of the respective assessments made against them;
- B. Declare that the federal tax liens attached to the real property described in paragraph 11 above;
- C. Order that any defendant claiming an interest in the real property described in paragraph 11 above superior to the federal tax liens affirmatively demonstrate their interest;
- D. Order that the federal tax liens be enforced, that the real property described in paragraph 11 above be sold in a judicial sale according to the law, free and clear of any right, title, lien, claim, or interest of any other lien holders, and that the proceeds of the sale be distributed to the parties in such amounts as this Court determines; and
- E. That this Court award the United States such other relief as is just and equitable, including awarding the United States its costs.

RONALD A. PARSONS, JR.
United States Attorney

RICHARD E. ZUCKERMAN
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.